

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In the Matter Of:

OLGA MARIA CASTRO SANTANA
SSN: xxx-xx-5255

Debtor

Case No. 13-02713 (ESL)

Chapter 13

MOTION TO DISMISS UNDER §1307(c)(6)

TO THE HONORABLE COURT:

COMES NOW, creditor POPULAR AUTO LLC, represented by the undersigned attorney and very respectfully states and prays as follows:

1. On April 9th 2013, debtor herein filed a bankruptcy petition under Chapter 13 of Title 11 of the United States Code.
2. Popular Auto LLC (hereinafter “Popular Auto”) is a secured creditor of the above named debtor pursuant to 11 U.S.C. §101(10) and therefore, a party in interest in the instant proceeding.
3. On August 3rd 2012, debtor Olga M. Castro Santana subscribed with appearing creditor a Conditional Sales Contract, account no. xxx-xxx-xxxxxx-0001, over a 2008 Suzuki Vitara. The contract was payable in one (1) initial monthly installment of \$519.26 and fifty-nine (59) consecutive monthly installments of \$424.26 each that will expire by its own terms on August 4th 2017.

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4. Popular Auto filed the corresponding claim for its secured debt on May 3rd 2013, in the total amount of \$18,839.84; of which \$3,139.50 are pre-petition arrears. See claim no. 1.
5. Debtor's confirmed Chapter 13 Plan dated April 9th 2013 (docket no. 2)¹, calls for fifty-two (52) payments of \$100.00; and eight (8) payments of \$520.00 for a total base of \$9,360.00. The plan provides for the trustee to pay attorney's fees in the amount of \$2,861.00; pre-petition arrears and direct payments to Popular Auto; and pro-rata distribution to all general unsecured creditors.
6. **Popular Auto submits that the debtor has defaulted in the terms and conditions of her confirmed plan, having at present five (5) post-petition payments in arrears with appearing creditor. The total amount in post-petition arrears is \$2,227.35 (\$424.26 + \$21.21 [late charges] = \$445.47 x 5).**
7. Section 1307 (c)(6) of the Bankruptcy Code, 11 U.S.C. §1307 (c)(6), provides in pertinent part that:

“(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including- ... **material default by the debtor with respect to a term of a confirmed plan.**”

(Bold added).

¹ As approved by this Honorable Court on June 3rd 2013 (docket no. 12).

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8. Upon information and belief, debtor has continued to operate and is at present operating the vehicle, causing depreciation in its value and therefore, jeopardizing Popular Auto's interest over such property.

WHEREFORE, creditor POPULAR AUTO LLC, respectfully requests from this Honorable Court that an order dismissing this case be entered for debtor's failure to comply with the requirements of 11 U.S.C. §1307(c)(6), and grant any such other remedy it may deem just and proper.

NOTICE IS HEREBY GIVEN THAT WITHIN THIRTY (30) DAYS AFTER SERVICE AS EVIDENCED BY THE CERTIFICATION, AND AN ADDITIONAL THREE (3) DAYS PURSUANT TO FED. R. BANK. P. 9006(f) IF YOU WERE SERVED BY MAIL, ANY PARTY AGAINST WHOM THIS PAPER HAS BEEN SERVED, OR ANY OTHER PARTY TO THE ACTION WHO OBJECTS TO THE RELIEF SOUGHT HEREIN, SHALL SERVE AND FILE AN OBJECTION OR OTHER APPROPRIATE RESPONSE TO THIS PAPER WITH THE CLERK'S OFFICE OF THE U.S. BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO. IF NO OBJECTION OR OTHER RESPONSE IS FILED WITHIN THE TIME ALLOWED HEREIN, THE PAPER WILL BE DEEMED UNOPPOSED AND MAY BE GRANTED UNLESS: (i) THE REQUESTED RELIEF IS FORBIDDEN BY LAW; (ii) THE REQUESTED RELIEF ITS AGAINST PUBLIC POLICY; (iii) IN THE OPINION OF THE COURT, THE INTEREST OF JUSTICE REQUIRES OTHERWISE.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY: That on March 5th 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Mr. Roberto Figueroa Carrasquillo, Esq., Attorney for debtor; Mr. Alejandro Oliveras Rivera, Esq., Chapter 13 Trustee; and I hereby certify that I have mailed by the United States Postal Service the document to the following non CM/ECF participants: Ms. Olga M. Castro Santana, Debtor, PO Box 565, Naguabo, P.R. 00718; and to all parties in interest as per attached the master address list.

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Respectfully submitted in San Juan, Puerto Rico, this 5th day of March, 2015.

s/ **EDGAR A. VEGA RIVERA**
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Consumer Bankruptcy Department
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In the Matter Of:

OLGA MARIA CASTRO SANTANA
SSN: xxx-xx-5255

Debtor

CASE NO. 13-02713 (ESL)

Chapter 13

AFFIDAVIT FOR DEFAULT JUDGMENT PURSUANT TO SECTION 201(b)(4)
OF THE SERVICE MEMBERS CIVIL RELIEF ACT OF 2003

I, Edgar A. Vega Rivera, Attorney for the Consumer Bankruptcy Department of Banco Popular de Puerto Rico, declare under penalty of perjury the following:

That according to the enclosed certification, provided by the Department of Defense Manpower Data Center (DMDC), the Debtor is not in active duty or under call to active duty as a member of the Army, Navy or Air Force of the United States of America; the National Guard; the Public Health Service or the National Oceanic and Atmospheric Administration.

In San Juan, Puerto Rico, this 5th day of March, 2015.

s/ **EDGAR A. VEGA RIVERA**



Status Report
Pursuant to Servicemembers Civil Relief Act

Last Name: CASTRO-SANTANA

First Name: OLGA

Middle Name: MARIA

Active Duty Status As Of: Mar-04-2015

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Mary M. Snavely-Dixon, Director
Department of Defense - Manpower Data Center
4800 Mark Center Drive, Suite 04E25
Arlington, VA 22350

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

Certificate ID: E30BO68A81A1A00

13-02713-ESL13 OLGA MARIA CASTRO SANTANA
Case type: bk Chapter: 13 Asset: Yes Vol: v Bankruptcy Judge: ENRIQUE S. LAMOUTTE
INCLAN
Date filed: 04/09/2013 Date of last filing: 06/06/2013 Plan confirmed: 06/03/2013

Creditors

AT&T (3691637)
PO BOX 192830
SAN JUAN PR 00919-2830
(cr)

BANCO POPULAR PR (3691638)
PO BOX 70100
SAN JUAN PR 00936-8100
(cr)

CAPITAL ONE (3691639)
PO BOX 85184
RICHMOND VA 23285-5184
(cr)

GE Capital Retail Bank (3750245)
Attn: Bankruptcy Department
PO Box 960061
Orlando FL 32896-0661
(cr)

GECRB/HOME DESIG FURN (3691640)
PO BOX 965036
ORLANDO FL 32896
(cr)

JC PENNEY (3691641)
PO BOX 364788
SAN JUAN PR 00936-4788
(cr)

LVNV Funding, LLC its successors and assigns as

assignee of Citibank, N.A. (3766383)
Resurgent Capital Services
PO Box 10587
Greenville, SC 29603-0587
(cr)

LVNV Funding, LLC its successors and assigns as

assignee of Arrow Financial Services, (3766401)
LLC
Resurgent Capital Services
PO Box 10587
Greenville, SC 29603-0587
(cr)

POPULAR AUTO (3712118)
BANKRUPTCY DEPARTMENT
PO BOX 366818
SAN JUAN PUERTO RICO 00936-6818
(cr)

SEARS (3691642)
PO BOX 6189 (cr)
SIOUX FALLS SD 57117-6189

WALMART (3691643)
PO BOX 530927 (cr)
ATLANTA GA 30353-0927

ZALES (3691644)
PO BOX 9722 (cr)
GRAY TN 37615-9722

PACER Service Center			
Transaction Receipt			
03/04/2015 17:10:17			
PACER Login:	bp4180:4057715:4053007	Client Code:	
Description:	Creditor List	Search Criteria:	13-02713- ESL13 Creditor Type: All
Billable Pages:	1	Cost:	0.10